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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,208	12/19/2000	David P. Henzerling	42390P10397	7691
8791	7590	07/28/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			HESS, DANIEL A	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/741,208	HENZERLING, DAVID P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel A. Hess	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 May 2005.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 6-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 6-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

✓1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413).  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Remarks and Response to Arguments*

This action is in response to applicant's 5/4/2005 amendment.

The applicant had argued that certain "well-known" applications of Windows 95 were not demonstrated in documentation. The examiner had assumed greater familiarity on the part of the applicant to the functionality of Windows 95, and realizes that opinions on what is "well-known" are subjective.

However, in meeting the burden of instantaneous and unquestionable demonstration, the examiner is including herewith three separate sources that discuss peer-to-peer file sharing capability (i.e. without a server, as per the applicant's definition). The examiner emphasizes that this is not a new rejection, but the same rejection with evidence of what the examiner considers to be "well-known."

These are printouts of the several websites as of 7/13/2005. Each of these websites discussed functionality of Windows 95. The year of public availability of Windows 95 is, of course 1995 (Windows was released with great fanfare in August 1995).

The URLs where the three articles were located:

<http://aroundcny.com/technofile/texts/tec022397.html>

<http://www.saintrochtree.com/zones/it/guides/2000-01-01-a/>

[http://www.brother.com/european/networking/chapter3/chapter3\\_networking-peer-to-peer.html](http://www.brother.com/european/networking/chapter3/chapter3_networking-peer-to-peer.html)

In addition, the applicant has argued (on page 8 of recent response):

“Even Examiner’s hard drive search example fails to demonstrate such an application, as least, because searching and storing a file is not analogous to directly receiving a file.”

The Examiner respectfully and emphatically disagrees because the instant invention *must* find the file first (i.e. search) and store the file if it is found. If a file is not found it certainly won’t be received.

Regarding an affidavit by the examiner, that is believed that this is unnecessary, since the examiner has provided documentary evidence herewith.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 6-8, 11, 14-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the peer-to-peer capability of Microsoft Windows 95™ networking, in view of wireless LANs, as exemplified by Stewart (US 5,633,888).

Three separate references which discuss the peer-to-peer capability of Windows 95™ are included below. They are

(1) "Using a Windows 95 peer-to-peer network" by Al Fasoldt  
(<http://aroundcny.com/technofile/texts/tec022397.html>)

(2) "How to set up a Windows 95 & Windows 98 Peer to Peer Network – a step by step guide" (<http://www.saintrochtree.com/zones/it/guides/2000-01-01-a/>)

and (3) "Building a Windows 95 Peer to Peer network"  
([http://www.brother.com/european/networking/chapter3/chapter3\\_networking-peer-to-peer.html](http://www.brother.com/european/networking/chapter3/chapter3_networking-peer-to-peer.html))

Re claims 1, 8, 11, 14-17: As seen in the above references, the common configuration of two computers exchanging data on a local area network (LAN) meets the definition of peer-to-peer communication. Thus, for example, one may have two PCs connected together on a local network wireless network using, for example, Windows™ networking. Each PC can be a music player, capable of playing music files (by running music player software). One can directly

receive a file from a remote device without prior knowledge of whether that file exists on the hard drive of that second computer by, for example, using Windows™ networking to perform a hard drive search for a particular file on a hard drive that is physically located on the other PC.

**See for example page 13 of the third reference, above. The ‘testshare’ folder, which is actually on another computer, is closed, and thus its files cannot be seen (i.e. there is no a priori knowledge of its contents). This folder is a communication path to the other computer. One can perform a search of this folder for a particular music file. Then, if the file turns up, one can save it onto a local hard drive. Wireless LANs were taught by Stewart and hundreds of others prior to the invention by the Applicant.**

In summary, two wirelessly networked PCs had, at the time of the invention, capability to enable all of the claimed limitations.

The motive to do this was to have greater access to music beyond those files one has stored locally.

Re claim 2: This corresponds to the hard drive of a PC.

Re claims 6, 7: Consider wirelessly networked laptop PCs: these could go anywhere (provided they are within communicating range), including in a car. Some wireless systems have very large ranges.

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1 above, in view of Jigour et al. (US 5,877,975).

Windows 95™ as modified by Stewart as applied to claim 1 above fails to teach the use of flash memory.

Jigour et al. teaches (throughout) the use of flash memory units which can plug into a PC.

In view of Jigour et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to store a music file the old and well-known flash memory of Jigour et al. because this could make such files available to, for example, a portable mp3 player.

Claims 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1 above in view of van Zoest et al. (US 6,496,802).

Re claim 4: Windows 95™ as modified by Stewart as applied to claim 1 above fails to teach or fairly suggest uploading a music file to an Internet service provider.

Van Zoest et al. teaching (entire document ; especially column 1 ; column 15, line 9) uploading mp3s to and downloading from an Internet service provider.

In view of van Zoest et al.'s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known uploading of files to an ISP because can make them available for access later or at another computer or networked device.

Re claims 18 and 19: See discussion re claim 4 and note that van Zoest et al.'s system is indeed a database for which there is access to files going both ways (download and upload). If a user accesses van Zoest et al.'s system via a wireless LAN, the claim limitations are met.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1, in view of Tosaya (US 6,323,893).

Windows 95™ as modified by Stewart as applied to claim 1 fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1, in view of and further in view of Segal et al. (US 6,167,251).

Windows 95™ as modified by Stewart as applied to claim 1 fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95<sup>TM</sup> as modified by Stewart as applied to claim 1 above, in view of Dutta et al. (US 6,636,854).

Windows 95<sup>TM</sup> as modified by Stewart as applied to claim 1 fails to enable the type of peer-to-peer communication embodied in claims 21-25.

Dutta et al. (see especially column 5, line 15 to column 6, line 35) describes the various aspects of 'Gnutella,' a peer-to-peer file sharing system having all of the peer-to-peer aspects recited in claims 21-25.

In view of Dutta et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to run the old and well-known 'Gnutella' software on the wireless LAN of Windows 95<sup>TM</sup> as modified by Stewart as applied to claim 1, because this gives a user at a particular device access to more music files than they otherwise would have.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft Windows Networking<sup>TM</sup> in view of Dutta et al. as applied to claims 21-25 above, in view of Tosaya.

Arguments are similar to those re claim 9 above, whose limitations are similar.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft Windows Networking<sup>TM</sup> in view of Dutta et al. as applied to claims 21-25 above, in view of Segal.

Arguments are similar to those re claim 9 above, whose limitations are similar.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DH

7/13/2005

**DANIEL STCYR  
PRIMARY EXAMINER**

